

# THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT RECOMMENDS *DENIAL* OF THIS VARIANCE REQUEST.

## SUMMARY OF FINDINGS

1. THE PROPOSED DEVELOPMENT ENCROACHES ON THE 25-YEAR AND 100-YEAR FLOODPLAINS OF SHOAL CREEK.
2. NO SAFE ACCESS. The depth of water in Sandalwood Cove adjacent to the property during the 100-year flood event is up to 2.8 feet deep. The depth of water at the proposed house would be up to 2.1 feet deep. First responder personnel such as EMS and AFD would not have safe access to the house in case of an occupant's emergency during a 100-year flood event. The water depths at the curb lines are higher than the maximum criteria (1.5 feet depth) for access by Austin Fire Department vehicles.
3. ADDITIONAL OCCUPANCY IN THE FLOODPLAIN. The proposed development will increase the opportunity for human occupancy in the floodplain. The proposed house would increase the conditioned living space within the 100-year floodplain by 1,382 sq. ft. or 35 percent compared to the two existing structures.
4. FINISHED FLOOR ABOVE MINIMUM REQUIRED ELEVATION. The proposed house structure *exceeds* City of Austin minimum elevation requirements (proposed elevation is at least one-foot above the 100-year floodplain elevation). The proposed finished floor will be elevated 2.2 feet above the 100-year floodplain.
5. A HARDSHIP CONDITION FOR THE PROPERTY DOES NOT EXIST. Serviceable residences and associated structures exist on the property.
6. PREREQUISITES FOR GRANTING VARIANCES ARE NOT MET. The proposed development does not meet Building Code prerequisites for granting a floodplain variance.
7. FLOODING IN AREA. The records for the Memorial Day flood of 1981 indicate several homes in this neighborhood were flooded.

## APPLICABLE CODE VARIANCES REQUESTED

- I. Land Development Code Section 25-7-92 (Encroachment on Floodplain Prohibited) prohibits construction of a building or parking area in the 25-year and 100-year floodplains.

***VARIANCE REQUESTED:*** *The applicant requests a variance from LDC Section 25-7-92(A) and (B) to allow encroachment of the proposed structure into the 25-year and 100-year floodplains.*

- II. LDC Section 25-12-3 (Local Amendments to the Building Code), Section 1612.4.3 Means of Egress provides that normal access to a building shall be by direct connection with an area that is a minimum of one foot above the design flood elevation.

***VARIANCE REQUESTED:*** *The applicant requests a variance to Building Code Section 1612.4.3, to allow construction of a structure without normal access, either vehicular or pedestrian, to an area that is a minimum of one foot above the design flood elevation. The depth of water at the curb line of Sandalwood Cove during the 100-year flood event will be up to 2.8 feet deep. The structure will be surrounded by approximately 2.1 feet of water during the 100-year flood event.*

- III. LDC Section 25-7-152 (Dedication of Easements and Rights-of-Way) requires that the owner of real property proposed to be developed dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and stormwater flow to the limits of the 100-year floodplain.

***VARIANCE REQUESTED:*** *The applicant requests that the drainage easement requirement for the entire property be eliminated. There is no basis for this request and staff presents this variance to exclude the footprint of the proposed structures (house and garage) from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- IV. LDC Section 25-7-2 (Obstruction of Waterways Prohibited) prohibits the placement of an obstruction in a waterway.

***VARIANCE REQUESTED:*** *Pursuant to the applicant's requests, the applicant requires a variance to place an obstruction, the proposed residence, in a waterway.*

- V. LDC Section 25-12-3, Appendix G 102.3 (Nonconforming Uses) requires that a structure may not be expanded, changed, enlarged, or altered in any way which increases its nonconformity and that no substantial improvement be made unless the structure is changed to conform with the floodplain regulations prescribed in the Land Development Code.

***VARIANCE REQUESTED:*** *Pursuant to the applicant's requests, the applicant requires a variance to increase the habitable area within the floodplain.*

#### **PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:**

Per LDC Section 25-12-3, Technical Codes, Section G 105 Variances, variances shall only be issued by the City Council upon an affirmative finding of the five conditions described below:

#### **PREREQUISITE**

1.) A technical showing of good and sufficient cause based on the unique characteristics of the size, configuration or topography of the site.

*Insufficient causes for issuing a variance may include the following:*

- *Less than a drastic depreciation of property.*
- *Convenience of property owner.*
- *Circumstances of owner not land.*
- *To obtain better financial return.*
- *Property similar to others in neighborhood.*
- *Hardship created by owner's own actions.*

2.) A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable;

*The location of the floodplain on the property is a characteristic of the land. Hardship refers to the*

#### **FINDING**

1) **CONDITION IS NOT MET.** The entire lot is completely inundated during the 25-year and 100-year flood events and unique site size, configuration or topography characteristics have not been demonstrated.

2) **CONDITION IS NOT MET.** The property has two serviceable structures on it. The property is developed now, and does not give rise to exceptional hardship status.

*effect of the floodplain status of the land on its use; it does not refer to personal or financial circumstances of the current owner of the land. In fact financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships. The applicant has the burden of proving exceptional hardship. FEMA advises that the reasons for granting floodplain management variances must be substantial and the proof compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.*

3.) A determination that granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing laws or conflict with existing laws or ordinances.

4.) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

*Relief is defined as respite from unnecessary hardship. Unnecessary hardship is defined as:*

- *Loss of all beneficial or productive use.*
- *Deprivation of reasonable return on property.*
- *Deprivation of all or any reasonable use.*
- *Rendering property valueless.*
- *Inability to develop property in compliance with the regulations.*
- *Reasonable use cannot be made consistent with the regulation.*

5.) Notification to the applicant in writing over the signature of the building official that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

3) **CONDITION IS NOT MET.** The proposed development will not result in increased flood heights. The approval of this variance request will, however, increase public safety threat and increase public expense because more occupants will be allowed in harm's way. There is a significant risk to first responders from deep flood waters in the event of an evacuation or rescue attempts.

4) **CONDITION IS NOT MET.** In this case, the proposed project and variance request is not the minimum required to afford relief.

5) **CONDITION IS MET.** The proposed finished floor elevation of the house will be more than one-foot above the 100-year floodplain.

## **VARIANCE CONDITIONS**

In the event that the variance request is granted, the variance is effective only upon the satisfaction of the following conditions:

1. The applicant shall dedicate and record an easement as required by LDC 25-7-152 for the entirety of the property excluding the footprint of the proposed structures before the City may issue a certificate of occupancy for the proposed residence. The building permit must indicate that no fill will be placed in this easement area as part of the development.
2. The applicant must provide a certification by a Texas Registered Professional Engineer or Architect certifying that the proposed structures will withstand the flood forces generated by the 100-year flood and that the design and construction is in accord with the latest edition of the American Society of Civil Engineers Manual 24 (Flood Resistant Design and Construction) before the City may issue a Building Permit for construction of the proposed residence.
3. The applicant shall submit a completed Elevation Certificate certifying the elevation of the finished floor of the proposed structure being a minimum of one foot above the 100-year floodplain elevation, signed by a Texas registered professional land surveyor, before the City may issue a Certificate of Occupancy for the proposed structure.